

#### § 270.314

(2) Identification of the person whose responses are sought;

(3) Contact information for the person to whom the responses should be submitted;

(4) The date and time by which the responses are requested;

(5) A statement that the questions for which responses are sought are attached; and

(6) Contact information for the person to whom questions or problems regarding the request should be addressed.

(c) Requests for documents or other physical evidence will be made in writing and shall include:

(1) A statement that the request is made to gather evidence necessary to an investigation being conducted under the Act;

(2) A description of the documents or other physical evidence sought;

(3) Identification of the person or persons to whom the request is made;

(4) A request that each person to whom the request is directed produce and permit inspection and copying of the documents and physical evidence in the possession, custody, or control of that person at a specific time and place; and

(5) Contact information for the person to whom questions or problems regarding the request should be addressed.

(d) Requests for witness testimony will be made in writing and shall include:

(1) The name of the person whose testimony is requested;

(2) The date, time, and place of the deposition;

(3) A statement that the person whose testimony is requested may be accompanied by an attorney; and

(4) Contact information for the person to whom questions or problems regarding the request should be addressed.

(e) Collections of evidence under paragraphs (b), (c), and (d) of this section are investigatory in nature and will not be considered research for any purpose.

[68 FR 4694, Jan. 30, 2003, as amended at 68 FR 66707, Nov. 28, 2003]

#### 15 CFR Subtitle B, Ch. II (1–1–05 Edition)

##### § 270.314 Negotiations.

The Lead Investigator may enter into discussions with appropriate parties to address problems identified with the submission of evidence requested pursuant to § 270.313 of this subpart. Should negotiations fail to result in the submission of such evidence, a subpoena may be issued pursuant to § 270.315.

[68 FR 4694, Jan. 30, 2003, as amended at 68 FR 24345, May 7, 2003]

##### § 270.315 Subpoenas.

(a) *General.* Subpoenas requiring the attendance of witnesses or the production of documentary or physical evidence for the purpose of taking depositions or at a hearing may be issued only under the signature of the Director with the concurrence of the General Counsel, but may be served by any person designated by the Counsel for NIST on behalf of the Director.

(b) *Determination whether to issue a subpoena.* In determining whether to issue a subpoena, the Director will consider the following factors:

(1) Whether the testimony, documentary, or physical evidence is required for an investigation being conducted pursuant to the Act;

(2) Whether the evidence sought is relevant to the purpose of the investigation;

(3) Whether NIST already has the evidence in its possession; and

(4) Whether the evidence required is described with specificity.

(c) *Contents of a subpoena.* A subpoena issued by the Director will contain the following:

(1) A statement that the subpoena is issued by the Director pursuant to section 5 of the Act;

(2) A description of the documents or physical evidence or the subject matter of the testimony required by the subpoena;

(3) A command that each person to whom it is directed attend and give testimony or produce and permit inspection and copying of designated books, documents or physical evidence in the possession, custody or control of that person at a time and place specified in the subpoena;

(4) A statement that any person whose testimony is required by the subpoena may be accompanied by an attorney; and

(5) The signature of the Director.

(d) *Service of a subpoena.* Service of a subpoena will be effected:

(1) By personal service upon the person or agent of the person whose testimony is required or who is in charge of the documentary or physical evidence required; or

(2) By certified mail, return receipt requested, or delivery to the last known residence or business address of such person or agent; or

(3) Where personal service, mailing, or delivery has been unsuccessful, service may also be effected by publication in the FEDERAL REGISTER.

(e) *Witness fees.* Witnesses will be entitled to the same fees and mileage as are paid to witnesses in the courts of the United States.

(f) *Failure to obey a subpoena.* If a person disobeys a subpoena issued by the Director under the Act, the Attorney General, acting on behalf of the Director, may bring civil action in a district court of the United States to enforce the subpoena. The court may punish a failure to obey an order of the court to comply with the subpoena as a contempt of court.

[68 FR 4694, Jan. 30, 2003, as amended at 68 FR 24345, May 7, 2003; 68 FR 66707, Nov. 28, 2003]

#### § 270.316 Public hearings.

(a) During the course of an investigation by a Team, if the Director considers it to be in the public interest, NIST may hold a public hearing for the purposes of gathering testimony from witnesses and informing the public on the progress of the investigation.

(b) Should NIST plan to hold a public hearing, NIST will publish a notice in the FEDERAL REGISTER, setting forth the date, time, and place of the hearing, and procedures for members of the public wishing to speak at the hearing. In addition, witnesses may be subpoenaed to provide testimony at a public hearing, in accordance with § 270.315 of this subpart.

(c) The Director, or his designee, will preside over any public hearing held pursuant to this section.

#### ENTRY AND INSPECTION

##### § 270.320 Entry and inspection of site where a building failure has occurred.

When the Director establishes and deploys a Team, the Team members will be issued notices of inspection authority to enter and inspect the site where the building failure has occurred.

##### § 270.321 Entry and inspection of property where building components, materials, artifacts, and records with respect to a building failure are located.

(a) In the course of an investigation, entry and inspection of property where building components, materials, artifacts and records with respect to a building failure are located normally will be conducted following the procedures described in §§ 270.322 through 270.325 of this subpart.

(b) Upon a written showing by the Lead Investigator of urgent and compelling reasons to believe that building components, materials, artifacts or records located on a particular property may be destroyed were the procedures described in §§ 270.322 through 270.324 of this subpart followed, the Director, with the concurrence of the General Counsel may immediately issue a notice of inspection authority for such property, pursuant to § 270.325 of this subpart.

##### § 270.322 Voluntary permission to enter and inspect property where building components, materials, artifacts, and records with respect to a building failure are located.

After the Director establishes and deploys a Team, members of the public are encouraged to voluntarily permit Team members to enter property where building components, materials, artifacts, and records with respect to the building failure are located, and take action necessary, appropriate, and reasonable in light of the nature of the property to be inspected and to carry out the duties of the Team.